

No. 15267

United States
Court of Appeals
for the Ninth Circuit

PERCY HOOD and GRACE HOOD, His Wife,
Appellants,

vs.

UNITED STATES OF AMERICA,
Appellee.

Transcript of Record

Appeal from the United States District Court for the
Western District of Washington,
Northern Division.

FILED

NOV

1956

PAUL P. O'BRIEN, CLERK

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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	PAGE
Answer of Defendants Percy Hood and Grace	
Hood to Counterclaim of the United States ..	50
Answer as to All Plaintiffs Other Than Percy	
Hood and Grace Hood	38
Answer as to Plaintiffs Percy Hood and Grace	
Hood	39
Ex.—Certified Letter Dated May 1, 1950 ...	43
Attorneys, Names and Addresses of	1
Certificate of Clerk to Record on Appeal	93
Conclusions of Law Proposed by Percy Hood	
and Grace Hood	76
Counterclaim	45
Ex. A—Memorandum of Sale of Allotted	
Land	50
B—Indian Deed Inherited Lands	50
Findings of Fact and Conclusions of Law	62
Conclusions of Law	74
Findings of Fact	62
Judgment Quieting Title Against the Claims of	
the United States as to Certain Lands and	
Establishing and Foreclosing a Lien Against	
Other Lands	80

Minute Order June 4, 1956—Denying New Trial	87
Motion for New Trial	84
Notice of Appeal	87
Notice of Removal	37
Oral Opinion of the Court	59
Petition for Removal	3
Complaint Cause No. 33445	5
Ex. A-1—Statement of Ownership of Lands by Plaintiffs, Except Percy Hood and Grace Hood, Together With Statements of Diking Charges Claimed Thereon	16
A-2—Land of Percy Hood and Grace Hood	18
B—Act of March 18, 1926, 44 Stat. 211-12	19
C—Landowners' Agreement With the Secretary of the Interior Lummi Project—Act of March 18, 1926 ..	21
D—No. 283 United States to Yah Him Alloo or Mary	25
E—Memorandum of Sale of Allotted Land	28
F—Indian Deed Inherited Lands ..	31
Statement of Points to Be Relied Upon on Ap- peal, Appellants	88

NAMES AND ADDRESSES OF ATTORNEYS

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United States District Court, Western District of
Washington, Northern Division

Federal Court No. 121

(Superior Court No. 33445)

FRANK X. IMHOF, LYLE HUNTER and
LORETTA HUNTER, His Wife; RUTH
SLATER, a Widow; EVERETT MATZ and
NINA MATZ, His Wife; MYRTLE BLOX-
HAM, ARTHUR B. WATTS and MAR-
GARET M. WATTS, His Wife, and PERCY
HOOD and GRACE HOOD, His Wife,

Plaintiffs,

vs.

UNITED STATES OF AMERICA,

Defendant.

PETITION FOR REMOVAL

Petition for Removal of the above-entitled cause
to the United States District Court for the Western
District of Washington, Northern Division at Bell-
ingham, from the Superior Court of the State of
Washington for Whatcom County.

Comes now the petitioner, United States of
America, through its undersigned attorneys, which
petitioner is named as defendant in the above-en-
titled cause and shows:

I.

A civil action has been commenced and is now
pending in the Superior Court of the State of
Washington for Whatcom County, wherein the

United States of America is defendant, which action is designated as No. 33445.

II.

Said Action No. 33445 is a civil action in which the United States District Court has jurisdiction in that said suit is to quiet title to certain lands and lift certain liens thereon under the provisions of Title 28, U.S.C., Sections 2410 and 1444.

III.

Petitioner seeks removal of said Action No. 33445 from the State Court to the Federal Court upon the ground of specific statutory authorization for removal under Title 28, Section 1446, U.S.C. Said action was commenced by Summons served on the United States Attorney on June 10, 1953.

IV.

Under the provisions of Title 28, U.S.C., Section 1446 (d), no bond is required of the United States of America.

V.

Petitioner promptly after filing of this petition gives written notice of the filing of this petition as required by Section 1446(e), Title 28, U.S.C., a true copy of which notice of proof of service is filed herein.

Wherefore, petitioner prays that said Action No. 33445 in the Superior Court of the State of Washington for Whatcom County, be removed from said court into this court for trial and determination.

Dated this day of June, 1953.

/s/ J. CHARLES DENNIS,
United States Attorney;

/s/ GEORGE E. HEIDLEHAUGH,
Special Assistant to the
United States Attorney.

Duly verified.

In the Superior Court of the State of
Washington for Whatcom County

No. 33445

FRANK X. IMHOF, LYLE HUNTER and
LORETTA HUNTER, His Wife; RUTH
SLATER, a Widow; EVERETT MATZ and
NINA MATZ, His Wife; MYRTLE BLOX-
HAM, ARTHUR B. WATTS and MAR-
GARET M. WATTS, His Wife, and PERCY
HOOD and GRACE HOOD, His Wife,

Plaintiffs,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

COMPLAINT

For Their Cause of Action, the Plaintiffs Allege:

I.

This action is brought to quiet the respective
titles of the Plaintiffs against liens claimed thereon

by the United States. The lands are situated in the County of Whatcom, State of Washington, and are hereinafter more particularly described. The action is authorized by Section 2410, Title 28, United States Code.

II.

That in said County and in the delta of the Nooksack River, the Defendant long prior to any date material to this Cause established the Lummi Indian Reservation, and in its capacity as guardian of and in trust for the members of the Lummi Tribe of Indians, did hold title to the lands within such Reservation, which included the lands involved in this Cause. Thereafter, and prior to the month of March, 1926, by process of allotment and patenting in severalty, and by sale and conveyance, certain tracts therein, among which are those now owned by the Plaintiffs (except the Plaintiffs Percy Hood and Grace Hood, his wife) became vested in private ownership in fee simple in the Plaintiffs, or in various persons from whom the Plaintiffs, or some of them, by mesne conveyances, have derived title. The said Plaintiffs, respectively, own the several tracts, each particularly described in Exhibit A-1 attached to and made a part hereof and are in possession thereof.

III.

That on March 18, 1926, the Congress of the Defendant, the United States, enacted a statute, approved the same day, cited as 44 Stat. at Large, 211-212, entitled and reading as set forth in Exhibit B attached hereto and made a part hereof and in effect appropriating the sum of \$65,000.00 for the

reclaiming by construction of dikes of approximately 4,000 acres of land in Indian and "private ownership" within and immediately adjacent to the Lummi Indian Reservation aforesaid and providing that the total costs of the project should be distributed equitably among the lands in Indian ownership and those in private ownership which might be benefited thereby in accordance with the benefits to be ascertained and designated by the Secretary of the Interior, and providing that the charges assessable against "Indian lands" should be reimbursed to the Treasury of the United States under such rules and regulations as the said Secretary might prescribe, and creating a lien against such lands therefor, and providing that no part of the sum provided for construction could be expended on account of lands in private ownership until appropriate repayment contracts in form to be approved by the said Secretary should have been properly executed by the landowners whose lands might be benefited by the project and providing that the said Secretary might declare by public notice the cost of the project and the equitable share to be assessed against the benefited lands to be paid in annual installments of 5% of the principal each year and with interest at 4% per annum on the deferred portions thereof, and authorizing the Secretary to perform all needful acts and to make such rules and regulations as might be necessary whereby to carry the said Act into full force and effect.

IV.

That thereafter, and in preparation for the construction of such dike, the Defendant's then Sec-

retary of the Interior did purport to determine that certain lands, including those owned by the said Plaintiffs were lands in "private ownership" within the meaning of that statute and that the same would be benefited by the construction of such dike, and he did by his agents then solicit the then owners of said lands of the Plaintiffs to enter into contracts, severally, with him in behalf of the Defendant whereby each such owner would agree to pay the Defendant such pro rata share of the entire cost of such Lummi Diking Project, and all of the betterment, operation and maintenance charges and penalties in connection therewith in not less than twenty (20) annual installments beginning in December of the third year following the issuance of the "public" notice contemplated by said Act, and would further agree that their respective lands would be by such contracts at once burdened with a first lien in favor of the Defendant to secure the payment of such costs, and would further agree upon demand of the Secretary to convey such lands to the United States as security therefor, and whereby under such contracts such owners would also agree that should it become necessary to incur any additional expense for betterment, operation or maintenance of said diking system after the construction thereof on issuance of such public notice they, respectively, would pay their "proper proportionate share" of such costs in addition to those fixed by the public notice and in accordance with rules and regulations that might be issued by the said Secretary of the Interior; that a typical form of such a contract

marked Exhibit C is attached hereto and made a part hereof.

V.

That the said then owners of said lands did refuse to execute such contracts, and they and their successors in title have ever since refused so to do; that the said Secretary or his successors and/or agents did purport to ascertain and determine that the said lands would be benefited by such construction but that notwithstanding such facts, and notwithstanding the prohibition in Section 3 of said Statutes forbidding the expenditure of any part of said appropriation for construction on account of any lands in private ownership until such contracts should have been executed, said Secretary and his successors, and his and their agents, did thereafter construct such dikes; that as the Plaintiffs are informed and believe about the year 1930 the said Secretary or his successors and/or agents did purport to declare by "public notice" the respective equitable shares of the construction costs thereof which he or they deemed attributable to the respective tracts of land within and without said Lummi Indian Reservation which they determined were benefited by such construction; that such "public notice" has not been filed or recorded in the office of the Auditor of said Whatcom County, Washington, wherein by the law of said state instruments affecting title to lands in said county should be recorded, but Plaintiffs have been informed that said "public notice" has been compiled and executed and deposited in some office of the Department of the Interior of the Defendant at Washington, District of Columbia, but Plain-

tiffs have not been able to ascertain whether said "public notice," or a copy thereof, has been filed or deposited in any other place, nor have Plaintiffs been able to examine or learn the exact contents thereof but are informed and believe that the said "public notice" asserts and claims in behalf of the Defendant liens against said tracts of the Plaintiffs herein for such respective amounts and to the same extent as if the Plaintiffs or their respective predecessors in title at that time, had executed the lien contracts hereinbefore mentioned; that the amounts so claimed, against each such tract of the Plaintiffs as furnished by agents of the Defendant, and the respective sub-items thereof, as of the recent dates respectfully indicated, are set forth in Exhibit A-1 above mentioned.

VI.

That thereafter the Defendant by its agents has continuously asserted and claimed the right to payment of said sums and existence of liens therefor on the respective lands of said Plaintiffs; that such assertions have become generally known in the community where said lands are located, and have diminished the value and/or the marketability of said lands and constitute clouds on the titles thereto; that in truth and in fact the Defendant has no lien or right thereto, or any other, right, title or interest in or to said lands, and that its claims are without any foundation and wholly void, and that its actions in respect to such claims are contrary to law, and in particular are in violation and excess of any authority granted by the Congress under said Act of March 18, 1926, and in any event violate the Constitution of the United States and

of the State of Washington in that such claims would deprive the Plaintiffs of property without due process of law.

VII.

That thereafter at various times the said Secretary or his successors persuaded the Congress of the United States to appropriate various sums of money for the costs of repair and/or betterment of said dike and under statutes some thereof providing that such costs were to be "reimbursable" to the Defendant from the owners of the lands benefited and further providing that no such funds were to be expended for the benefit of lands in "private ownership" without arrangements for such reimbursement and providing that the finding of the existence of such benefits and the distribution of such costs to such tracts were to be made pursuant to such rules and regulations which the said Secretary or his successors might formulate and that such costs as so distributed should be liens against the respective tracts so found to be benefited. That the Defendant, by its said Secretary, his successors or agents, has purported to formulate such rules and to find that among others, the various tracts of the Plaintiffs hereinbefore mentioned, would be and have been so benefited, and threatens to distribute all such costs on lands, including those of the said Plaintiffs, and claims and asserts that the United States has rights to liens to secure the repayment of such additional costs; that the Plaintiffs or their respective predecessors in title have at no time agreed, in writing or otherwise, to the imposition of such charges,

and have had no opportunity whatsoever to be heard with respect to the necessity for, or the kind or nature of such betterments or repairs.

VIII.

That the Plaintiffs, Percy Hood and Grace Hood, his wife, are the owners of a tract of land within the said Lummi Reservation, which is more particularly described in Exhibit A-2 attached hereto, and which tract is therein and hereinafter referred to as the "Ya-him-a-loo Tract." That in all respects other than the derivation and status of the title thereto, the matters and things hereinbefore pleaded refer to said tract. That the facts of said ownership are: That on December 31, 1884, the United States, then having legal title as Trustee as aforesaid, conveyed the said land by patent executed by its then President to Mary Yah-Him-A-Loo, which was recorded June 13, 1885, in Vol. 1, page 56, Records of Whatcom County, Washington, a copy of which, marked Exhibit D, is attached hereto and made a part hereof; that on November 10, 1925, title to said tract was in the legal heirs of said Mary Yah-Him-A-Loo (she having previously died) but their right to alienate the same was subject to the approval of the Secretary of the Interior of the Defendant; that on said date of November 10, 1925, said tract was sold to the said Plaintiffs, Percy Hood and Grace Hood, in the following manner: W. F. Dickens, agent of the Defendant and its Superintendent of the Tulalip Indian Agency, under whose administrative juris-

diction said land of the said heirs were, received a bid from said Hoods (pursuant to previous public invitation by him) and in conformity with the terms of said bids and his acceptance thereof, he entered with them into a "memorandum of sale" agreement, copy of which, marked Exhibit E, is attached hereto and made a part hereof. That said agreement provided for a total price of \$10,100.00, payable \$2,525.00 in cash and the remainder in four equal deferred successive annual payments, evidenced by separate promissory notes each in the amount of \$1,893.75, and each note bearing interest at 6% per annum, and further provided that if said notes were so paid according to their tenor then a Deed from said heirs, and approved by the said Secretary of the Interior, and which Deed was to be held in escrow by the Defendant's Commissioner of Indian Affairs, should be delivered to the said Hoods; that such a Deed, bearing even date therewith was so escrowed, and a copy thereof marked Exhibit F is attached hereto and made a part hereof; that said Plaintiffs did pay all of said notes, long before maturity of the latest to become due, and before April 30, 1928, whereupon said Deed was delivered to them and was recorded in Book 200, page 235, Records of said County; that possession of said real estate was given to the said Plaintiffs, Percy Hood and Grace Hood, his wife, on November 10, 1925, or in any event prior to the enactment of said Act of March 18, 1926; that said Deed was approved by John H. Edwards, Assistant Secretary of the Interior, acting in be-

half of the Secretary of the Interior, of the Defendant, on August 10, 1926; that the Defendant contends said tract was in "Indian ownership," and was not in "private ownership" within the meaning of the said Act of March 18, 1926, and that the same therefore became encumbered, under the provisions of Section 2 of said Act, with a lien in favor of construction charges apportionable thereto; that said Plaintiffs allege that under the facts and circumstances hereinbefore set forth, that equitable title did pass, and legal title to said tract should be deemed to have passed, to them as of November 10, 1925, or in any event that under such facts and circumstances the Defendant is estopped to claim the contrary; that in any event title in fee to said lands was vested in the said heirs of Mary Yah-Him-A-Loo at the time of such sale and that there was no power on the part of the Defendant, or its Congress, to impose any lien, and particularly the lien contemplated by said Act on lands so owned without the consent or by the contract of such owners; that none of the heirs of said Mary Yah-Him-A-Loo, that is to say none of the said owners, ever so consented or contracted, and that the claims of the Defendant to a lien for reimbursement of such costs as to said tract or any of the other tracts mentioned in this Complaint are without any foundation in law or in fact.

Wherefore, these Plaintiffs pray that they be adjudged and decreed to be the owners in fee simple of said lands and that their titles thereto

be, respectively, quieted against any lien, right, title or interest of the Defendant therein or thereto and that the liens and claims of the Defendant arising out of said Act of March 18, 1926, and any other Acts of Congress supplemental thereto, and related to the construction, operation, maintenance, betterment and/or improvement of any dikes by the Defendant affecting said lands be adjudged to be null, void and of no effect; and that they have judgment for their costs and such other and further relief as may be proper.

/s/ DONALD M. BUSHNELL,

SKEEL, McKELVY, HENKE,
EVENSON & UHLMANN,

By /s/ WM. S. EVENSON,

Attorneys for the Plaintiffs.

Duly verified.

EXHIBIT A-1

Statement of Ownership of Lands by Plaintiffs, Except Percy Hood and Grace Hood, Together With Statements of Diking Charges Claimed Thereon

(Following the name of each Plaintiff hereafter is the description of the tracts owned by each such Plaintiff or Plaintiffs referred to in Paragraph II of the Complaint and following the description a statement of the liens claimed thereon by the United States.

Frank X. Imhof (who is married to Patricia Imhof):

Lots 2 and 9, and the SW $\frac{1}{4}$ NE $\frac{1}{4}$ and the NW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 6, Twp. 38 N., R. 2 E.

Total construction assessments unpaid April 30, 1952 (19—\$63.37 installments due)	\$1,204.03	
Interest to April 30, 1952.....	1,045.22	
	<hr/>	
Total due for Construction.....		\$2,249.25
Total operation and maintenance assessments unpaid April 30, 1952.....	1,736.62	
Unpaid penalty charges computed to April 30, 1952.....	870.03	
	<hr/>	
Total due for operation & maintenance		2,606.65
		<hr/>
Total operation-maintenance, and construction assessments due April 30, 1952, with interest and penalties to April 30, 1952.....		\$4,855.90
		<hr/> <hr/>

Lyle Hunter and Loretta Hunter, his wife, Gov't Lot 3, Sec. 1, Twp. 38 N., R. 1 E.

Total construction assessments unpaid April 30, 1953 (19—\$6,321 $\frac{1}{2}$ installments due)	\$ 120.17 $\frac{1}{2}$	
Interest to April 30, 1952.....	104.32 $\frac{1}{2}$	
	<hr/>	
Total due for construction.....		224.50
Total operation and maintenance assessments unpaid April 30, 1952.....	422.79 $\frac{1}{2}$	
Unpaid penalty charges computed to April 30, 1952.....	211.80 $\frac{1}{2}$	
	<hr/>	
Total due for operation & maintenance		634.60
		<hr/>

Total operation-maintenance, and construction assessments due April 30, 1953, with interest and penalties to April 30, 1952.....	859.10
--	--------

Everett Matz and Nina Matz, his wife, Gov't Lot 2, Sec. 1, Twp. 38 N., R. 1 E.

Total construction assessments unpaid April 30, 1952 (19—\$6.32½ installments due)	\$ 120.17½
Interest to April 30, 1952.....	104.32½
Total due for construction.....	\$ 224.50

Total operation and maintenance assessments unpaid April 30, 1952.....	422.79½
Unpaid penalty charges computed to April 30, 1952.....	211.80½
Total due for operation & maintenance	634.60

Total operation-maintenance, and construction assessments due April 30, 1952, with interest and penalties to April 30, 1952.....	859.10
--	--------

Ruth Slater (Mrs. Glen Slater).

So much of Lots 3, 4 and 6, and the SW¼ NW¼ Sec. 2, Twp. 38 N., R. 1 E. as are within the boundaries of the Lummi Diking District.

Total construction assessments unpaid April 30, 1952 (17—\$35.74 installments due)	607.58
Unpaid interest to April 30, 1952.....	479.96
Total due for construction.....	1,087.54

Total operation and maintenance assessments unpaid April 30, 1952.....	771.63
Unpaid penalty charges computed to April 30, 1952.....	287.02
Total due for operation & maintenance	1,058.65

Total operation-maintenance, and construction assessments due April 30, 1952, with interest and penalties to April 30, 1952.....	\$2,146.19
--	------------

Myrtle Bloxham

NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ and Lot 13, Sec. 7, T. 38 N., R. 2 E. W. M., except a triangular parcel of land in the southwest corner of said Gov't Lot 13, lying southwest of Smuggler Slough; also a triangular parcel of land in Lot 8, south of said Lot 13, between Smuggler Slough and Slater Slough.

Total operation and maintenance assessments unpaid March 31, 1952.....	\$ 535.04	
Unpaid penalty charges computed to March 31, 1952.....	706.25	
	<hr/>	
Total due for operation and maintenance		\$1,241.29
Total assessments (construction) unpaid March 31, 1952 (19—\$39.14 in installments due)	743.66	
Interest of 4% on \$743.66 from date of Public Notice, August 19, 1930, to March 31, 1952	643.06	
	<hr/>	
Total due for construction.....		1,386.72
		<hr/>
Total operation-maintenance, and construction assessments due March 31, 1952, with interest and penalties to March 31, 1952.....		\$2,628.01
		<hr/>

Arthur B. Watts and Margaret M. Watts, his wife, NW $\frac{1}{4}$ of the NW $\frac{1}{4}$ Gov't Lot 4 in Section 1, T. 38 N., R. 1 East of W. M. less roads.

The amounts claimed against this Tract are not definitely known to Plaintiffs, though request therefor from the Bureau of Indian Affairs has been long since made. When obtained, Plaintiffs will ask leave to insert the same.

EXHIBIT A-2

Land of Percy Hood and Grace Hood

Indian Deed to Percy Hood.

Lots 5, 6 and 7, Section 6, Township 38 North of Range 2 E. W.M. containing 79.82 acres more or less.

EXHIBIT B

Act of March 18, 1926, 44 Stat. 211-12

“An Act for the purpose of reclaiming certain lands in Indian and private ownership within and immediately adjacent to the Lummi Indian Reservation, in the State of Washington, and for other purposes.”

Sec. 1. That there is hereby authorized to be appropriated the sum of \$65,000 or so much thereof as may be required, for reclaiming by construction of dikes approximately four thousand acres of lands in Indian and private ownership within and immediately adjacent to the Lummi Indian Reservation, in the State of Washington: Provided, that the total cost of the project shall be distributed equitably among the lands in Indian ownership and the lands in private ownership that may be benefited in accordance with the benefits received as designated by the Secretary of the Interior.

Sec. 2. The construction charge properly assessable against the Indian lands shall be reimbursed to the Treasury of the United States under such rules and regulations as the Secretary of the Interior may prescribe, and there is hereby created a lien against all such lands, which lien shall be recited in any patent issued therefor, prior to the reimbursement of the total amount chargeable against such lands.

Sec. 3. No part of the sum provided for herein shall be expended for construction on account of

any lands in private ownership until an appropriate repayment contract in accordance with the terms of this Act and in form approved by the Secretary of the Interior shall have been properly executed by the landowners whose lands may be benefited by the project.

Sec. 4. The Secretary of the Interior is hereby authorized and directed to declare by public notice the cost of the project and the equitable share to be assessed against the lands, benefited in accordance with their respective benefits, which cost shall be repaid in annual installments, the first installment to be 5 per centum of the total charge and be due and payable on the 1st day of December of the third year following the date of such public notice, the remainder of the said cost with interest on deferred amounts against land in private ownership from the date of said public notice to be 4 per centum per annum to be payable on each December 1 thereafter, on the same basis as the first installment, until the obligation is paid in full.

Sec. 5. The Secretary of the Interior is hereby authorized to perform any and all acts and to make such rules and regulations as may be necessary and proper for the purpose of carrying the provisions of this Act into full force and effect.

EXHIBIT C

Landowners' Agreement With the Secretary of the Interior—Lummi Project—Act of March 18, 1926.

Whereas an Act of Congress approved March 18, 1926, entitled "An Act for the purpose of reclaiming certain lands in Indian and private ownership within and immediately adjacent to the Lummi Indian Reservation, in the State of Washington, and for other purposes."

(Here is inserted the text of the Act of March 18, 1926, as set forth in full in Exhibit B.)

And, Whereas, Section 3 of the Act provides that no part of the sum provided for therein shall be expended for construction on account of any lands in private ownership until an appropriate repayment contract in accordance with the terms of the Act and in form approved by such landowners whose lands may be benefited by the project.

And, Whereas, the undersigned declares that he is the owner of approximately acres of land adjacent to the Lummi Indian Reservation, which will benefit by the construction of the project authorized by said Act, which he wishes to have included within the project for the purpose of benefiting such lands under the conditions hereinafter stated.

Now, therefore, and in order to aid in the accomplishment of the purposes of the Act, the said

undersigned owner of the lands aforesaid covenants, promises, and agrees to and with the Secretary of the Interior and with all other landowners whose lands may be included within the project, in consideration of the premises, the premises of said other landowners, and the work to be done by the United States in connection with the project, that if the Secretary of the Interior shall construct dikes for the purpose contemplated in the Act said lands shall at once be and become burdened with and subject to a first lien, so far as this agreement can make the same a first lien, to secure to the United States the full payment of a pro rata share of the entire costs of said project and all of the betterment, operation, and maintenance charges, and penalties in connection therewith; and the undersigned further hereby agrees that, if and when notified to do so by the Secretary of the Interior or his duly authorized agent or agents, he will promptly further convey or cause to be conveyed to the United States by good and sufficient deeds or other instruments satisfactory to the Secretary of the Interior, for use upon and in connection with said project to assure the repayment of the pro rata share of the entire cost of the project properly apportionable to said lands, which lands are described as follows:

Lot 5 NW Sec. 6, T. 38 N., R. 2 E. W.M.

Lot 6 NW Sec. 6, T. 38 N., R. 2 E. W.M.

Lot 7 SW Sec. 6, T. 38 N., R. 2 E. W.M.

Class 2 of Dyking construction charges 20.00
acres.

Class 3 of Dyking construction charges 49.82 acres.

The undersigned further covenants and agrees that after the completion of the project and the issuance of public notice by the said Secretary of the Interior as provided for in Section 4 of the Act he shall promptly make payment of the first installment amounting to five (5) per centum of the total charge on the 1st of December of the third year following the date of the issuance of public notice, and that he shall pay each succeeding installment on each December 1st thereafter until the total indebtedness shall have been paid; that said undersigned shall have the right to pay on the due date of the first installment the total assessment against his lands; otherwise he shall pay an interest charge on all installments except the first, at the rate of four (4) per centum per annum which shall be computed from the date of the issuance of said public notice. The undersigned may at any time, however, prior to the due dates pay the total of the then unpaid indebtedness.

The undersigned further agrees to furnish the Secretary of the Interior or his agents, within 30 days from demand by any such agent, proper abstracts of title covering his said lands; and failing so to do hereby authorizes him or his agents to obtain same at said owner's expense. Said abstracts after examination shall be returned to their owners.

The undersigned further agrees and promises, should it be necessary to incur any additional ex-

pense for betterment, operation or maintenance of the said diking system after the project shall have been constructed and public notice issued therefor, to pay his proper proportionate share of such betterment, operation and maintenance costs, which amounts shall be paid in addition to the sum fixed by the public notice and shall be paid in accordance with rules and regulations that may be issued by said Secretary of the Interior.

It is understood and agreed that the work shall be undertaken and completed as rapidly as conditions warrant after contract shall have been obtained from the owners of the private lands coming within the project.

After payment shall have been made by the undersigned of the total obligation assessable against his lands, the said Secretary of the Interior shall issue a relinquishment of the lien herein created against said lands. Such relinquishment, however, shall not be construed as relieving the landowner from paying his proportionate share of any betterment, maintenance and operation costs that may accrue from time to time in operating and maintaining the project.

This agreement shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, and assigns of the parties hereto.

In Witness Whereof the undersigned ha... hereunto set hand and seal this day of , 192 . .

State of Washington,
County of—ss.

This instrument was acknowledged before me
this day of, 192..., by the above-
named and, his wife.

In Witness Whereof I have hereunto set my
hand and seal of office.

.....,
Notary Public.

EXHIBIT D

No. 283, United States to Yah Him Aloo or Mary,
Patent.

(4-457 a.)

The United States of America. To all to whom
these presents shall come, Greeting:

Whereas, by the seventh article of the treaty con-
cluded on the twenty-second day of January Anno
Domini one thousand eight hundred and fifty-five,
between Isaac I. Stevens, governor, and superin-
tendent of Indian Affairs of Washington Territory,
on the part of the United States and the chiefs,
headmen, and delegates of the Dwamish, Suqua-
mish, Sktahlmish, Samahmish, Smalhkahmish,
Skopeahmish, Stkahmish, Snoqualmoo, Skainham-
ish, N'Quentlmamish, Sktahlejum, Stoluckwhamish,

Snohomish, Skagit, Kikiallus, Swinamish, Squinamish, Salikumehu, Noowhaha, Nookwachalunish, Muscequaguilch, Chobahabbish, and other allied and subordinate tribes and lands of Indians, it is provided that the President, "at his discretion, cause the whole or any portion of the lands hereby reserved, or of such other land as may be selected in lieu thereof, to be surveyed into lots and assign the same to such individuals or families as are willing to avail themselves of the privilege, and will locate on the same as a permanent home on the same terms and subject to the same regulations as are provided in the sixth article of the treaty with the Omahas, so far as the same may be applicable." And, Whereas, there has been deposited in the General Land Office of the United States an order bearing date October 16, 1884, from the Acting Secretary of the Interior, accompanied by a Return dated from the Office of Indian Affairs, with a list approved October 14, 1884, by the President of the United States, showing the names of members of the Lummi band of Indians who have made selections of land in accordance with the provisions of the said treaties, in which list the following tracts of land have been designated as the selection of Yah him aloo or Mary, viz.: Lots numbered five, six and seven of section six in township thirty-eight North of range two East of the Willamette Meridian, Washington Territory, containing Seventy-nine acres and eighty-two hundredths of an acre. Now know Ye that the United

State of America in consideration of the promises and in accordance with the directions of the President of the United States under the aforesaid sixth article of the treaty of the sixteenth day of March, Anno Domini one thousand eight hundred and fifty-four, with the Omaha Indians, has given and granted and by these presents does give and grant unto the said Yah him aloo or Mary and to her heirs the tracts of land above described but with the stipulation contained in the said sixth article of the treaty with the Omaha Indians, that the said tracts "shall not be aliened or leased for a longer term than two years; and shall be exempt from levy sale or foreiture, which conditions shall continue in force until a State constitution embracing such lands within its boundaries shall have been formed and the legislature of the State shall remove the restrictions" and "no State Legislature shall remove the restrictions without the consent of Congress." To have and to hold the said tracts of land with the appurtenances unto the said Yah him aloo or Mary and to heir heirs forever, with the stipulation aforesaid. In Testimony whereof I, Chester A. Arthur, President of the United States, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed. Given under my hand at the City of Washington this thirty-first day of December in the year of our Lord one thousand eight hundred and eight-four and of the Independence of the United States the one hundred and ninth.

By the President:

CHESTER A. ARTHUR.

By M. McKEAN,
Secretary.

S. W. CLARK,
Recorder of the General Land
Office.

Received for record at 4:00 p.m. June 13, A.D. 1885, and recorded at the request of Yah him aloo or Mary.

C. DONOVAN,
County Auditor of Whatcom County, Washington
Territory.

[Seal of U. S. General Land Office]: Recorded,
Vol 1, pg. 56.

EXHIBIT E

5-110

Memorandum of Sale of Allotted Land (When Conveyance Is by Deed)

The undersigned Percy Hood and Grace H. Hood, his wife, having on November 10, 1925, purchased Lots 5, 6 and 7 of Sec. 6, Twp. 38 N., Range 2 E., W.M., containing 79.82 acres more or less allotment No. Lummi 22 of Lummi Indian Reservation, Washington, for \$10,100.00, and having made a payment of \$2,525.00 being 25 per cent thereof, and agreed to pay the balance thereof, being \$7,575.00

in deferred payments as evidenced by four promissory notes of even date herewith for \$1,893.75 each, numbered from one to four payable to the Superintendent or other officer in charge of the Tulalip Indian Reservation, on or before 1, 2, 3 and 4 years after date, with interest at the rate of six per cent per annum, payable annually from the date of approval of this memorandum by the Secretary of the Interior;

Now This Memorandum Witnesseth: That upon the payment in full by said Percy Hood and Grace H. Hood, his wife, of said sum of \$7,575.00 being the balance of said consideration of \$10,100.00, with interest thereon, according to the tenor and effect of said notes, then and in such case a deed duly executed by said heirs of Mary Yah him a loo, and approved by the Secretary of the Interior, shall be delivered to said Percy Hood and Grace H. Hood, his wife, conveying said land to them and their heirs pursuant to law.

And said Percy Hood and Grace H. Hood, his wife, agree that upon default by them in the payment of said notes or either of them or the interest thereon, the sale of said land to Percy Hood and Grace H. Hood, his wife, may, at the option of the Secretary of the Interior, be cancelled and said land readvertised for sale, and in such case the sum of \$2,525.00, being 25 per cent of the amount agreed to be paid by said Percy Hood and Grace H. Hood, his wife, shall be forfeited as provided by law for the use of heirs of Mary Yah him aloo,

vendors, and any balance remaining of the amount paid by said Percy Hood and Grace H. Hood, his wife, after deducting said 25 per cent forfeiture, shall, in case the same is not repaid to Percy Hood and Grace H. Hood, his wife, by the vendors, be repaid to them out of the proceeds of such subsequent sale, or from such other sources as may be applicable in the discretion of the Secretary of the Interior;

It is further understood and agreed that the deed hereinbefore provided for shall be retained in escrow by the Commissioner of Indian Affairs until all the notes and interest before mentioned shall have been paid, when it shall be delivered to said Percy Hood and Grace H. Hood, his wife, as hereinbefore provided.

Signed at Ferndale, Washington, this 10th day of November, 1925.

/s/ W. F. DICKENS,
Superintendent and
Disbursing Agent;

/s/ PERCY HOOD;

/s/ GRACE H. HOOD,
Purchaser.

Stamp: Department of the Interior, Washington,
D. C., Aug. 10, 1926.

Approved:

(6856)

/s/ JOHN H. EDWARDS,
Assistant Secretary.

EXHIBIT F

5-183

Indian Deed Inherited Lands

This Indenture, Made and entered into this 10th day of November, 1925, by and between Mary George, Mary Ann Kittles, Cecelia Morris, Agnes G. Phair, Julia Ann Jefferson, Lucinda George, Joseph Jefferson, Henry Kwina, Sarah Descanum, John C. Brown, Maggie Youckton, Agnes Bob, Johanna Guerin Kelly, Alexis George, Augustine Youkton, Matilda Curley, Sarah Bob, Minnie Williams, Edna Bizer Hillaire, Daniel Price, Wilfred Price, Harry Price, and Joseph Hillaire and Walter F. Dickens, Legal Guardian of Elmer Brown, Mary Madeline Brown, Ethel Hillaire and Louis Hillaire, minors, of the State of Washington, heirs of Mary Yahimaloo, deceased, a Lummi Indian, Allottee No. L-22, parties of the first part, and Percy Hood of Ferndale, Washington, party of the second part:

Witnesseth, That said parties of the first part, for and in the consideration of the sum of Ten Thousand One Hundred & No/100 Dollars, in hand paid, the receipt of which is hereby acknowledged, do hereby grant, bargain, sell, and convey unto the said party of the second part the following described real estate and premises situated in Whatcom County, State of Washington, to wit:

Lots Five (5), Six (6) and Seven (7), Section Six (6), Township Thirty-eight (38) North of Range 2 E. W.M., containing 79.82 acres more or

less, together with all the improvements thereon and the appurtenances thereunto belonging. And the said parties of the first part, for themselves and their heirs, executors, and administrators, do hereby covenant, promise and agree to and with the said party of the second part, his heirs and assigns, that they will forever warrant and defend said premises against the claims of all persons, claiming or to claim by, through, or under them only.

To have and to hold said described premises unto the said party of the second part, his heirs, executors, administrators, and assigns, forever.

In Witness Whereof, the said parties of the first part have hereunto set their hands and seals.

Witness to thumb mark signatures:

/s/ EDNA BIZER HILLAIRES

/s/ C. E. ANDRES

/s/ LISA ANDRES

/s/ ALEXIS GEORGE

/s/ C. E. ANDRES

/s/ LISA ANDRES

/s/ LUCINDA GEORGE

/s/ C. E. ANDRES

/s/ LISA ANDRES

/s/ JOSEPH HILLAIRES

/s/ C. E. ANDRES

/s/ LISA ANDRES

/s/ SARAH DESCANUM
(Her Thumb Mark)

/s/ C. E. ANDRES
/s/ LISA ANDRES

/s/ HENRY KWINA
(His Thumb Mark)

/s/ C. E. ANDRES
/s/ LISA ANDRES

/s/ CECELIA MORRIS

/s/ C. E. ANDRES
/s/ LISA ANDRES

/s/ JOSEPH JEFFERSON

/s/ C. E. ANDRES
/s/ LISA ANDRES

/s/ MARY GEORGE
(Her Thumb Mark)

/s/ C. E. ANDRES
/s/ LISA ANDRES

/s/ AGNES G. PHAIR

/s/ C. E. ANDRES
/s/ LISA ANDRES

/s/ JULIA ANN JEFFERSON

/s/ C. E. ANDRES
/s/ LISA ANDRES

/s/ MARY ANN KITTLES

/s/ C. E. ANDRES
/s/ N. W. JAMES

/s/ AUGUSTINE YOUKTON

/s/ C. E. ANDRES

/s/ N. W. JAMES

/s/ JOHN C. BROWN

/s/ C. E. ANDRES

/s/ N. W. JAMES

/s/ JOHANNA GUERIN KELLY

/s/ C. E. ANDRES

/s/ N. W. JAMES

/s/ MATILDA CURLEY

/s/ C. E. ANDRES

/s/ N. W. JAMES

/s/ SARAH BOB

/s/ C. E. ANDRES

/s/ N. W. JAMES

/s/ AGNES BOB

(Her Thumb Mark)

/s/ C. E. ANDRES

/s/ N. W. JAMES

/s/ MAGGIE YOUCKTON

/s/ C. E. ANDRES

/s/ N. W. JAMES

/s/ MINNIE WILLIAMS

/s/ C. E. ANDRES

/s/ N. W. JAMES

/s/ HARRY PRICE

/s/ O. H. KELLER

/s/ LUCILLE J. MASON

/s/ DANIEL PRICE

/s/ O. H. KELLER

/s/ LUCILLE J. MASON

/s/ WILFRED PRICE

/s/ C. E. ANDRES

/s/ MABEL COTTON

/s/ WALTER F. DICKENS,

Legal Guardian for Elmer Brown, Mary Madeline Brown, Ethel Hillaire and Louis Hillaire, Minors.

/s/ ARNELLA E. SHELTON

State of Washington,
County of Whatcom—ss.

This Is to Certify that on this 16th day of November, A.D. 1925, before me, C. E. Andres, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally came Edna Bizer Hillaire, Joseph Hillaire, Alexis George and Lucinda George, to me known to be the individuals described in and who executed the within instrument, and acknowledged to me that they signed and sealed the same as their free and voluntary act and deed for the uses and purposes therein mentioned.

Witness my hand and official seal, the day and year in this certificate first above written.

/s/ C. E. ANDRES,

Notary Public in and for the State of Washington,
Residing at Ferndale.

By similar forms and before the same Notary were taken and attached to said Deed the following acknowledgments:

By Sarah Descanum	November 17, 1925
Henry Kwina	November 17, 1925
Cecelia Morris	November 17, 1925
Joseph Jefferson	November 17, 1925
Mary George	November 17, 1925
Agnes G. Phair	November 17, 1925
Julia Ann Jefferson	November 17, 1925
Mary Ann Kittles	November 19, 1925
Augustine Youkton	November 19, 1925
John C. Brown	November 19, 1925
Johanna Guerin Kelly	November 19, 1925
Matilda Curley	November 19, 1925
Sarah Bob	November 21, 1925
Agnes Bob	November 28, 1925
Maggie Youckton	November 28, 1925
Minnie Williams	December 1, 1925
Daniel Price	January 8, 1926
Henry Price	January 8, 1926
Wilfred Price	January 16, 1926

By similar form on the 28th day of June, 1926, and in the County of Snohomish was taken the acknowledgment before Bertah E. Dickens, a Notary

Public, of "Walter F. Dickens, legal guardian for Elmer Brown, Mary Madeline Brown, Ethel Hillaire and Louis Hillaire, minors."

[Endorsed]: Filed June 23, 1953, U.S.D.C.

[Endorsed]: Filed September 6, 1956, U.S.C.A.

[Title of District Court and Cause.]

NOTICE OF REMOVAL

To: Donald M. Bushnell, Attorney for Plaintiffs
Herein:

Notice Is Hereby given that Cause No. 33,445, commenced in the Superior Court of the State of Washington for Whatcom County, is removed to the United States District Court for the Western District of Washington, Northern Division, at Bellingham, by means of petition filed in said Federal court.

/s/ J. CHARLES DENNIS,
United States Attorney;

/s/ GEORGE E. HEIDLEBAUGH,
Special Assistant to the
United States Attorney.

[Endorsed]: Filed June 26, 1953.

[Title of District Court and Cause.]

ANSWER AS TO ALL PLAINTIFFS OTHER
THAN PERCY HOOD AND GRACE HOOD,
HIS WIFE

Comes now the United States of America, defendant, through its undersigned attorneys, and answers the complaint of Frank X. Imhof, Lyle Hunter and Loretta Hunter, his wife; Ruth Slater, a widow; Everett Matz and Nina Matz, his wife; Myrtle Bloxham. Arthur B. Watts and Margaret M. Watts, his wife, being all of the plaintiffs other than Percy Hood and Grace Hood, his wife, by moving to dismiss said complaint as to all plaintiffs other than the said Hoods on the ground that the Court is without jurisdiction of this action as to the claims of the said plaintiffs other than the said Hoods for the reason that the United States has not consented to suit. The consent of the United States extends only to actions in which it has or claims a lien, and those jurisdictional conditions are absent with respect to the claims of these plaintiffs other than the said Hoods.

/s/ CHARLES P. MORIARTY,
United States Attorney;

/s/ GEORGE E. HEIDLEBAUGH,
Special Assistant to the
United States Attorney.

[Endorsed]: Filed November 12, 1953.

[Title of District Court and Cause.]

ANSWER AS TO PLAINTIFFS PERCY HOOD
AND GRACE HOOD, HIS WIFE

Comes now the United States of America through its undersigned attorneys and for answer to the complaint of Percy Hood and Grace Hood, his wife, admits, denies and alleges as follows:

I.

As to paragraph I of the complaint, defendant admits that the Court has jurisdiction of the subject matter of the suit under Title 28, U.S.C., Section 2410, and admits that the lands of plaintiffs Percy Hood and Grace Hood, his wife, described in the complaint are situated in Whatcom County, State of Washington, in the Western District of Washington, Northern Division, at Bellingham, Washington.

II.

As to paragraph II of the complaint, defendant admits the existence of the Lummi Indian Reservation for a long time prior to March 1, 1926, the title to the lands of which now are or have been held in trust by the defendant, and admits that said reservation is on the Delta of the Nooksack River, and admits that the plaintiffs Percy Hood and Grace Hood, his wife, own an interest in the lands described as belonging to them in the complaint, to wit: Lots 5, 6 and 7, Section 6, Township 38

North of Range 2 East, W.M., containing 79.82 acres, more or less, subject, however, to the provisions of the Act of March 18, 1926, Ch. 60, 44 Stat., 211, as supplemented by law. Defendant alleges that the other allegations in paragraph II of the complaint are irrelevant to the claim of plaintiffs Percy Hood and Grace Hood, his wife, and are, therefore, denied.

III.

As to paragraph III of the complaint, defendant admits the enactment into law on March 18, 1926, of that certain statute known as Public Law No. 49 of the 69th Congress entitled "An Act for the Purpose of Reclaiming Certain Lands in Indian and Private Ownership Within and Immediately Adjacent to the Lummi Indian Reservation, in the State of Washington, and for Other Purposes," which statute is found in Chapter 60, at pages 211 and 212 of the Statutes at Large, Vol. 44, Part 2, and alleges that said statute is still in force. Defendant alleges the statute speaks for itself and, therefore, denies each and every other allegation contained in paragraph III of the complaint.

IV.

As to paragraph IV of the complaint, defendant alleges that the allegations contained therein are irrelevant to the claim of the plaintiffs to whom this answer is directed, and are, therefore, denied.

V.

As to paragraph V of the complaint, defendant

admits that neither Percy Hood and Grace Hood, his wife, plaintiffs herein, nor their predecessors in title, at no time executed any contract similar to that mentioned in paragraphs IV and V of the complaint with the defendant regarding the lands described in the complaint as owned by said plaintiffs; admits that the Secretary of Interior did allocate the expense of dike construction among certain lands in the reservation including that claimed by plaintiffs; admits that the dikes were constructed; admits that the Secretary did declare by public notice the cost of the project and the equitable share to be assessed against the lands benefited as required by statute; and alleges further that the other allegations in paragraph V of the complaint, although in part true, relate to lands in private ownership, are irrelevant to the claim of plaintiffs Percy Hood and Grace Hood, his wife, and are, therefore, denied.

VI.

As to paragraph VI of the complaint, defendant admits that defendant and its agents assert a lien upon the lands alleged in the complaint to be owned by the plaintiffs Percy Hood and Grace Hood, his wife; admits that said lien constitutes a cloud upon the title to said land, which lien and cloud are asserted, among other places, in that certain letter dated May 1, 1950, from William Zimmerman, Jr., Acting Commissioner, Bureau of Indian Affairs, Department of Interior, a certified copy of which is attached to this answer and made a part hereof;

and denies each and every other allegation contained in paragraph VI of the complaint.

VII.

As to paragraph VII of the complaint, defendant denies the same, except defendant admits the expenditure of money in the operation, maintenance and repair of the diking improvements; admits the charging of certain amounts thereof to the plaintiffs Percy Hood and Grace Hood, his wife; and admits the claiming by defendant of a lien against the lands described in the complaint as the lands of said plaintiffs, and alleges all to be in accordance with law, and denies that the United States is estopped to assert a lien upon the lands here involved.

VIII.

As to paragraph VIII of the complaint, defendant admits that Percy Hood and Grace Hood, his wife, are the owners of the tract stated in the complaint to be owned by them, subject, however, to the Act of March 18, 1926, as supplemented, as alleged in the counterclaim, paragraph I; admits the execution and delivery of documents with certain minor differences, substantially as shown in Exhibits D, E and F attached to the complaint, except that it alleges herein as though a part hereof, the contents of paragraphs IV and V of the counterclaim following hereafter, and denies the other allegations contained therein, and further denies that the defendant is estopped to assert its lien upon the lands herein described.

Wherefore, the defendant denies that the plaintiffs Percy Hood and Grace Hood, his wife, are entitled to the relief sought in the complaint.

/s/ CHARLES P. MORIARTY,
United States Attorney;

/s/ GEORGE E. HEIDLEBAUGH,
Special Assistant to the
United States Attorney.

EXHIBIT

United States
Department of the Interior
Bureau of Indian Affairs

Date: December 29, 1952.

Pursuant to Title 28, Section 1733, United States Code, I hereby certify that each annexed paper is a true copy of a document comprising part of the official records of the Bureau of Indian Affairs, Department of the Interior, in my custody:

In Testimony Whereof, I have hereunto subscribed my name, and caused the seal of the Bureau of Indian Affairs to be affixed on the day and year first above written.

[Seal] /s/ C. E. LAMSON,
Acting Executive Officer.

(Copy)

United States
Department of the Interior
Bureau of Indian Affairs
Washington 25, D. C.

May 1, 1950.

In Reply Refer to:
Irrigation 15024-49-341.4.

Mr. Percy Hood, President,
The First National Bank,
Ferndale, Washington.

Dear Mr. Hood:

This will acknowledge the receipt of your letter of March 22 making further reference to a lien for Lummi Diking Project charges against lands allotted to Mary Yah-him-a-loo, which you purchased from her heirs.

The land referred to is described as Lots 5, 6 and 7 of Section 6, Township 38 North, Range 2 East. Apparently no contract for the repayment of construction costs was ever made of record.

Section 2 of the Act of Congress approved March 18, 1926 (44 Stat. 212) created a lien against all Indian-owned lands of the project for the repayment of reimbursable construction costs properly assessable against the lands, and required that such a lien be recited in any patent issued for the lands prior to the reimbursement of the total amount chargeable against the lands.

The deed conveying the above-described lands to you was approved by the Department August 10, 1926, after passage of the Act of March 18, 1926, and, by oversight, contains no lien clause. The omission from Government deeds and land patents of provisions which are required by Act of Congress to be placed therein, does not release a landowner from conditions imposed by law. See *United States v. Joyce*, 240 Fed. 610. Deeds omitting provisions required by law carry all of the rights which the law confers. (*Davis's Administrator v. Weibold*, 139 U.S. 507; *Deffebach v. Hawks*, 115 U.S. 392.) In these circumstances, the statutory lien declared by Congress to exist against the land will continue in force until the charges against the land are paid in full.

Sincerely yours,

[Seal] /s/ WILLIAM ZIMMERMAN, JR.,
Acting Commissioner.

[Endorsed]: Filed November 12, 1953.

[Title of District Court and Cause.]

COUNTERCLAIM

By way of Counterclaim against the plaintiffs, Percy Hood, and Grace Hood, his wife; and the marital community thereof, the United States, defendant herein, alleges:

I.

Jurisdiction is founded in this Counterclaim upon the existence of a question arising under particular Federal statutes as follows:

Act of June 25, 1948, ch. 646, 62 Stat. 933;

Act of March 18, 1926, ch. 60, 44 Stat. 211;

Act of July 3, 1926, ch. 771, 44 Stat. 856;

Act of February 14, 1931, ch. 187, 46 Stat. 1129;

Act of February 17, 1933, ch. 98, 47 Stat. 832;

Act of November 4, 1933, ch. 282, 47 Stat. 1608;

Act of June 22, 1936, ch. 691, 49 Stat. 1772.

II.

Defendant alleges that Lots 5, 6 and 7, Section 6, Township 38 North, Range 2 East, are within the Lummi Indian Reservation; that at the time of the enactment of the Act of March 18, 1926, ch. 60, 44 Stat. 211, said lands were in Indian ownership within the meaning of said terms in said statute.

III.

That the Secretary of Interior has expended certain sums of money to effectuate the purposes of said statute, as supplemented, and as a consequence of said statutes and expenditures, on April 30, 1952, the sum of \$1,830.24, plus payments, interest and

penalties due since that date, is due the United States, determined as follows:

Serial No. 26, Percy Hood, Lots 5, 6 and 7, Sec. 6, Twp. 38 N., R 2 E.

Total construction assessments unpaid		
April 30, 1952 (19—\$19.97 install-		
ments due)	\$	379.43
Interest to April 30, 1952.....		329.38
		<hr/>
Total due for construction.....	\$	708.81
Total operation and maintenance as-		
sessments unpaid April 30, 1952.....		747.12
Unpaid penalty charges computed to		
April 30, 1952.....		374.31
		<hr/>
Total due for Operation and		
maintenance		1,121.43
		<hr/>
Total operation-maintenance, and con-		
struction assessments due April 30,		
1952, with interest and penalties to		
April 30, 1952.....		\$1,830.24
		<hr/> <hr/>

That pursuant to said statutes a lien is imposed upon said lands to secure said sums due; that said sums are unpaid, are now due and owing to the United States; that repeated demand has been made for such payment, and the United States is entitled to foreclose said lien against said property.

IV.

That as of the date of the filing of this Counterclaim, the plaintiffs, herein, Percy Hood and Grace Hood, his wife, and the community thereof, owned an interest in said property; that prior to the acquisition of said interest, the property was owned in restricted title by certain Indian heirs of the original Indian Patentee from the United States under a restricted patent; that the restricted patent left in the United States, as trustee, the underlying fee in said lands,

which were allotted lands under the laws of the United States relating to grants to Indians; that at the time of the effective operation of Exhibits A and B attached hereto, said lands were, and now continue to be, subject to the provisions of the Act of March 18, 1926, as supplemented, citations supra, imposing a lien thereon; that Exhibit A attached hereto is a certified copy of Memorandum of Sale of Allotted Land for the land here involved; that Exhibit B is a certified copy of Indian Deed Inherited Lands for the land here involved; that certified black on white photostats will be substituted for Exhibits A and B when received.

V.

That said property is now owned by Percy Hood and Grace Hood, his wife, and the community thereof, subject to said lien; that the Memorandum of Sale of these allotted lands, although dated November 10, 1925, was in fact not received by the Tulalip Indian Agency until June 4, 1926, nor received by the Bureau of Indian Affairs until July 6, 1926, nor approved by the Assistant Secretary of Interior until August 10, 1926; that although the deed to plaintiffs Hood to these lands is dated November 10, 1925, it was placed in escrow and was not executed or acknowledged by all of the Indian heirs until June 28, 1926, and was not delivered to the purchasers (Hoods) until after it had been approved by the Assistant Secretary of Interior on August 10, 1926; that nothing in the transactions mentioned in this paragraph V takes said

lands out of the classification of lands in Indian ownership as used in the Act of March 18, 1926, as supplemented, citations supra.

Wherefore, the United States of America, defendant herein, prays this court as follows:

1. That the said lien be foreclosed;
2. That the United States Marshal be directed to seize said property by decree of this Court;
3. That the Court order the United States Marshal to sell the said land and give a deed thereto, free and clear of all claims and liens save as may be proved in this proceedings, and save the lien of the United States mentioned herein;
4. That from the proceeds of said sale all costs, charges and expenses of this proceeding and this sale be paid; that the claim of the United States alleged in paragraph III hereof be paid, together with reasonable attorney's fees in the sum of \$500.00;
5. That if there are any proceeds in excess of these payments, that they be given to the person or persons lawfully entitled to the same; and
6. That the Court grant such other and further relief as may be just and proper.

/s/ CHARLES P. MORIARTY,
United States Attorney;

/s/ GEORGE E. HEIDLEBAUGH,
Special Assistant to the
United States Attorney.

EXHIBIT A

[Exhibit A attached to the foregoing is identical to Exhibit E attached to the Complaint, set out in full at pages 28 to 31 of this printed record.]

EXHIBIT B

[Exhibit B attached to the foregoing is identical to Exhibit F attached to the Complaint, set out in full at pages 31 to 38 of this printed record.]

[Endorsed]: Filed November 12, 1953.

[Title of District Court and Cause.]

ANSWER OF DEFENDANTS PERCY HOOD
AND GRACE HOOD TO COUNTERCLAIM
OF THE UNITED STATES

For Answer to the Counterclaim of the United States against the Plaintiffs, Percy Hood and Grace Hood, the said Plaintiffs allege:

I.

They admit that the lands described in Paragraph II of the Counterclaim are within the Lummi Indian Reservations but deny all remaining allegations of said Paragraph.

II.

As to the allegations of Paragraph III of the Counterclaim, they admit that the Secretary of the

Interior caused to be expended certain sums in compliance with said Act, or of said Act as supplemented; they admit that repeated demands were made of them by the Defendant for payment of the sums claimed by it to be due; they deny all other allegations of said Paragraph III, and in particular deny that even if any sums may be found to be due for constructions, assessments and interest thereon that any other sums for operation, maintenance or penalties thereafter became due; they further state that even if any construction assessments became due that they are without knowledge or information sufficient to form a belief as to the correctness of the amounts for such items stated in said Paragraph III and therefore deny the allegations of such amounts.

III.

These Plaintiffs as to Paragraph IV admit that at the time of filing the Counterclaim, they and their marriage community owned an interest in said property, and that the said property was owned by certain Indian heirs of the original Indian Patentee, to wit Mary Ya-Him-Aloo, under a patent from the United States; and admit that said lands were "allotted" under the laws of the United States relating to grants on the Lummi Indian Reservation; they admit that Exhibit A attached to the Counterclaim is a copy of "Memorandum of Sale of Allotted Land" for the land here involved and that Exhibit B is a copy of a copy of "Indian Deed

of Inherited Lands''; that they deny each and every other allegation of said Paragraph IV.

IV.

That as to the allegations of Paragraph V of the Counterclaim these Plaintiffs admit that they now own the said property and that the said Memorandum of Sale on its face bears endorsement by the Assistant Secretary of the Interior as of August 10, 1926, and that the deed to them was placed in escrow and that it was not delivered to them until subsequent to the endorsement of his approval thereon by the said Assistant Secretary of the Interior, and in fact not until a year or more thereafter and upon payment by them of the balance owed under said Memorandum of Sale; that they deny each and every other allegation of said Paragraph V.

V.

That by way of new matter these Plaintiffs incorporate herein by reference the allegations of their Complaint in this Cause, and in particular the allegations of Paragraph VIII thereof and the Exhibits referred to therein, and in amplification thereof further state, that the Defendant, the United States, in the exercise of its jurisdiction and duties over Indians did so through the Department of Interior, and by the Bureau of Indian Affairs of said Bureau, and with reference to the Lummi Indians, and all matters in controversy in this Cause, by and through its Tulalip Indian Agency, of which, at all times material hereto,

Walter F. Dickens was the Superintendent and Disbursing Agent. That the giving of approval to the conveyances of Indian lands involved in the Lummi Indian Reservation was at such times exercised in accordance with the rules, regulations and practices established by said Department, and together with the pertinent statutes of the United States controlling the granting of such approval by the Secretary of the Interior; that all proceedings and things done and leading up to the approval of the Memorandum of Sale and the Deed of Inherited Lands hereinbefore mentioned were done pursuant and in accordance with such rules, regulations and practices, and that upon compliance therewith, as in this instance, the approval became mandatory and ministerial; that the exact text, nature and quality of such regulations and practices are solely within the knowledge of the Defendant but that these Plaintiffs are informed and believe that the same required of adult Indian owners of patented lands desiring the sale thereof to request or petition the said Department, or the Superintendent of said Agency as its agent to arrange such sale; that thereby such Agent, in proceedings consequent thereto, became also the agent of said owners; that thereupon it became the duty of such agent to cause an appraisal to be made of the lands and to cause advertisements and notices of such sale with call for bids to be given in manner and form specified by such regulations, and in the event that bids within the amounts permitted by such regulations were made such Agent was authorized

to accept such bid and in such event, in the absence of fraud, and upon compliance with the terms of such bid the owners became obligated to convey, and the Secretary to approve.

That pursuant to such practice and regulations the adult owners named in said Deed, other than those specified therein as minors, make such request to the said Dickens, as Superintendent, to thereupon follow the procedure above set forth, whereupon these Plaintiffs did bid the sum of Ten Thousand and One Hundred Dollars (\$10,100.00) for said land, and did tender an initial payment, as required by the terms of such advertisements of \$2,525.00, and four notes payable, respectively, one, two, three and four years thereafter; that such bid was the only, or in any event, the best bid submitted, and that the said Dickens pursuant to the authority vested in him did thereupon and with these Plaintiffs execute said Memorandum of Sale in duplicate and did take the said initial deposit and said notes; that thereby, pursuant to the provisions set forth therein, and to the rules, regulations and practices aforesaid the Secretary of the Interior became obligated, upon further full performance by these Plaintiffs, to approve the conveyance to them; that it was also understood and agreed that these Plaintiffs could take possession and they did so some time prior to the end of 1925, and in reliance upon the promises of the said Dickens as aforesaid and prior to March 18, 1926, they obtained a tenant and made other preparations to, and did initiate farming operations thereon; that at the time of such pur-

chase these Plaintiffs obtained the advice of an attorney as to the title and were informed by him that in order to assure the merchantability of the title it would be necessary that certain undivided interest of minor heirs, to wit a $2/864$ ths undivided interest therein in Ethel Hillaire, and a like interest in Louis Hillaire, and a $8/864$ ths undivided interest for each of the minors of Elmer Brown and Mary or Madeline Brown be sold under a guardian to be appointed by the Superior Court of the State of Washington, for Whatcom County, in which county they resided, acting in probate pursuant to the laws pertaining thereto of the State of Washington; that at the time of said transactions said Dickens agreed to cooperate in such respects in order to facilitate the sale of the adult interests and on November 30, 1925, he caused to be filed in said court his petitions for appointment as guardian of the estates, in one cause of the said Ethel Hillaire and Louis Hillaire, and in another cause of said Elmer Brown and Mary Brown, and after due and proper proceedings he was on December 14, 1925, appointed and did qualify as guardian in each such cause, and on February 6, 1926, did petition for authority to sell said undivided interests in and to said real property; that due proceedings were had pursuant to each such petition resulting in due course in a sale of the said interests of the said minors to the Plaintiff, Percy Hood, which sale was thereafter duly confirmed; that pursuant to such a sale and confirmation the said Dickens executed

a separate conveyance for the said interests of the Hillaire minors to said Plaintiff and a separate conveyance for the said Brown minors, and did also sign the said "Indian Deed of Inherited Lands" as their guardian;

That in all such actions the said Dickens represented and was the agent of the said Secretary of the Interior; that he received the said Memorandum of Sale on the date thereof and by so doing the said Secretary, and the Department of the Interior, and the Bureau of Indian Affairs did then receive the same, regardless of any reception date stamp thereon by the office of said agency or of said Department; that at all times after making their said deposit of \$2,525.00, and the giving of their said notes and the execution of said Memorandum of Sale these Plaintiffs were obligated to take and pay for said land, except upon forfeiture of not less than the said \$2,525.00 and the said Secretary was obligated in good faith to use all proper means to effectuate a conveyance to them, subject to their payment of the said notes; that upon the execution of said Memorandum of Sale they became vested with a present equitable title in said land; that the said "Indian Deed Inherited Lands" was dated as of the same date as the said Memorandum in order to reflect the intention of the parties that notwithstanding the passage of time required to obtain the signatures and acknowledgments of the adult heirs and the proper conveyance of the interests of the minor heirs under the probate laws

of the State of Washington that the delivery of said Deed should be considered to be effective as of said date, and also that the approval of the said Secretary thereto should relate back to said date; that the Defendant up to 1950 did treat said lands as being in private ownership, and up to said time did solicit and urge these Plaintiffs to sign lien contracts for the payment of said claimed assessments on its assertion that said land was privately owned; that by reason of all of the facts and circumstances hereinbefore pleaded, the Defendant, the United States is estopped to impose any additional lien upon the interests of these Plaintiffs therein as so acquired, and in equity and good conscience said defendant is bound to recognize the date of November 10, 1925, as the effective date for the vesting of the title of the interests of the Plaintiffs in and to the land involved in this cause.

VI.

These Plaintiffs further state that regardless of whether these Plaintiffs purchased the said land prior to the enactment of the Act of March 18, 1926, or not, the fee title therein at that time was vested by reason of the patent from the United States hereinbefore mentioned to Mary Ya-Him-Aloo, or her heirs, subject only to the restriction upon alienation consisting of the requirement that the Secretary of the Interior approve any alienation, and that the same was private property, and either was not "Indian land" within the meaning of the said Act, or if construed so to be then the

a separate conveyance for the said interests of the Hillaire minors to said Plaintiff and a separate conveyance for the said Brown minors, and did also sign the said "Indian Deed of Inherited Lands" as their guardian;

That in all such actions the said Dickens represented and was the agent of the said Secretary of the Interior; that he received the said Memorandum of Sale on the date thereof and by so doing the said Secretary, and the Department of the Interior, and the Bureau of Indian Affairs did then receive the same, regardless of any reception date stamp thereon by the office of said agency or of said Department; that at all times after making their said deposit of \$2,525.00, and the giving of their said notes and the execution of said Memorandum of Sale these Plaintiffs were obligated to take and pay for said land, except upon forfeiture of not less than the said \$2,525.00 and the said Secretary was obligated in good faith to use all proper means to effectuate a conveyance to them, subject to their payment of the said notes; that upon the execution of said Memorandum of Sale they became vested with a present equitable title in said land; that the said "Indian Deed Inherited Lands" was dated as of the same date as the said Memorandum in order to reflect the intention of the parties that notwithstanding the passage of time required to obtain the signatures and acknowledgments of the adult heirs and the proper conveyance of the interests of the minor heirs under the probate laws

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attempted imposition of a lien thereon by force of such statute and without the consent or agreement of said owner-heirs was in excess of the powers of the Congress and void.

Wherefore, these Plaintiffs pray that the said Counterclaim of the Defendant, the United States, be dismissed at its cost.

/s/ DONALD M. BUSHNELL,
Ferndale, Washington.

SKEEL, McKELVY, HENKE,
EVENSON & UHLMANN,

By /s/ W. E. EVENSON,
Attorneys for Plaintiffs,
Percy Hood and Grace Hood.

Receipt of copy acknowledged.

[Endorsed]: Filed January 28, 1955.

In the District Court of the United States for the
Western District of Washington, Northern
Division

No. 121

FRANK X. IMHOF, et al.,

Plaintiffs,

vs.

UNITED STATES,

Defendant.

Before Judge Bowen.

COURT'S ORAL OPINION

Monday, March 19, 1956

The Court: As to the Hood property and the action of the plaintiffs as it concerns the Hood property, the Court finds, concludes and decides against the contentions and prayer of the plaintiffs because before that property, the Hood property, was delivered to the Hoods the Congress passed an Act requiring this further condition (as to assessments), and I am of the opinion and hold that it was within the proper scope of congressional legislative power to do that and to make the provisions and effects of such new legislative requirement valid as against this property, the legal title to which was still in the United States of America at the time that Act was passed, notwithstanding that escrow arrangements or arrangements in the nature of an escrow had been made as of an earlier date, and

That in consequence thereof as to the Hood property plaintiffs take nothing against the United States of America by reason of this action;

That as to all of the non-Hood plaintiffs the Court finds in favor of the plaintiffs, both as to jurisdiction and as to the merits of the action; and

As to such other properties of the non-Hood plaintiffs it is the finding, conclusion and decision of the Court that all the material allegations of plaintiff's complaint are sustained by a preponderance of the evidence in this case and that plaintiff may have the judgment of the Court accordingly. Particularly as to the issue of jurisdiction concerning the complaints of the non-Hood plaintiffs and concerning the objection of the United States made in its answer to the complaints of such non-Hood plaintiffs, "By moving to dismiss said complaint as to all plaintiffs other than the said Hoods on the ground that the Court is without jurisdiction of this action as to the claims of the said plaintiffs other than the said Hoods for the reason that the United States has not consented to suit," this Court rules against the contentions of defendant United States of America and finds that all of such non-Hood plaintiff's causes of action in their complaints asserted are actions to quiet title to their land against whatever claims the United States of America now or may hereafter assert against plaintiffs' lands. The United States has consented to be sued in actions of that type under the terms and provisions of 28 U.S.C.A., Section 2410.

Is there any issue not covered by what the Court

has said already as a part of its decision? If so, will you remind me of what issue you think has not been disposed of?

Mr. Evenson: Well, I am aware, your Honor, that Mr. Bushnell has in mind that under this Act there was to be no interest on these assessments. I am not as familiar with that point as he is, but I think your Honor has not commented, of course, on that phase of it.

The Court: Was that covered in the prior argument? That point was covered during the trial, but was it covered in the prior arguments?

Mr. Bushnell: No, sir.

The Court: I will hear you.

Mr. Bushnell: I am assuming that your Honor is granting the prayer of the United States cross-complaint to foreclose their alleged lien against Mr. Hood. In that prayer they asked for interest. Now, their whole case is bottomed on the theory that that was Indian land, and of course that's the foundation of your Honor's decision, as I understand it.

Now, the Act of March 18, 1926, says in Section 4 that, "The Secretary is authorized to declare by public notice the cost of the project, the equitable share to be assessed against the lands benefited in accordance with their respective benefits, which costs shall be repaid in annual installments, the first installment to be five per cent of the total charge, the remainder of the said cost with interest on deferred amounts against land in private ownership from the date of said public notice, to be four

per cent per annum until the obligation is paid in full.”

Well, it doesn't say “nothing” for the Indian, but it implies that there will be no interest on Indian land, so I think that clearly the government can't have its pie and eat it too.

The Court: The Court further finds, concludes and decides that defendant recover against the plaintiffs Hood on defendant's Counterclaim in the principal amount of defendant's claim against plaintiffs Hood without interest.

[Endorsed]: Filed August 30, 1956.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above-entitled cause came on regularly for trial and the Court having duly considered the evidence and being fully advised in the premises now finds the following:

Findings of Fact

I.

That this action is brought to quiet respective titles of the plaintiffs against liens alleged to be asserted and claimed thereon by the United States. The lands are situated in the County of Whatcom, State of Washington, and within the original boundaries of the Lummi Indian Reservation. The

action is brought under Section 2410, Title 28, United States Code.

II.

That long prior to any date material to this cause, the defendant, United States, established said Lummi Indian Reservation, and in its capacity as guardian of and in trust for the members of the Lummi Tribe of Indians, did originally hold title to the lands within the said Reservation. Thereafter, and prior to the month of March, 1926, by process of allotment and patenting in severalty, and by sale and conveyance, certain tracts within the said Reservation became owned in private ownership, among which are those now owned by the plaintiffs (except the plaintiffs, Percy Hood and Grace Hood, his wife), which at said time were owned in fee simple by said plaintiffs or by their respective predecessors in title; that tracts, respectively so owned by said plaintiffs are as follows:

By Frank X. Imhof (who is married to Patricia Imhof)

Lots 2 and 9, and the SW4 NE4, and the NW4 SE4, Sec. 6, Twp. 38N., R. 2 E.

By Lyle Hunter and Loretta Hunter his wife,
Gov't Lot 3, Sec. 1, Twp. 38 N., R. 1 E.

By Everett Matz and Nina Matz, his wife,
Gov't. Lot 3, Sec. 1, Twp. 38 N., R. 1 E.

By Ruth Slater (Mrs. Glen Slater)

Lots 3, 4 and 6, and the SW4 NW4 Sec. 2,
Twp. 38 N. R. 1 E.

By Myrtle Bloxham

NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ and Lot 13, Sec. 7, T. 38 N., R. 2 E. W. M., except a triangular parcel of land in the southwest corner of said Gov't Lot 13, lying southwest of Smuggler Slough; also a triangular parcel of land in Lot 8, south of said Lot 13, between Smuggler Slough and Slater Slough.

By Arthur B. Watts and Margaret M. Watts, his wife,

NW $\frac{1}{4}$ of the NW $\frac{1}{4}$ (Gov't Lot 4) in Section 1, T. 38 N., R. 1 East of W. M., less roads.

III.

That by its Act of March 18, 1926, (44 Stat. at Large, 211-212) the Congress of the United States appropriated the sum of \$65,000.00 for the reclaiming by construction of dikes of approximately 4,000 acres of land in Indian and "private ownership" within and immediately adjacent to the Lummi Indian Reservation aforesaid and providing among others that the total costs of the project should be distributed equitably among the lands in Indian ownership and those in private ownership which might be benefited thereby in accordance with the benefits to be ascertained and designated by the Secretary of the Interior, and providing that no part of the sum provided for construction could be expended on account of lands in private ownership until appropriate repayment contracts in form to be approved by the said Secretary should

have been properly executed by the landowners whose lands might be benefited by the project and providing that the said Secretary might declare by public notice the cost of the project and the equitable share to be assessed against the benefited lands to be paid in twenty (20) annual installments with interest at 4% per annum on the deferred portions thereof.

IV.

That thereafter, and in preparation for the construction of such dike, the defendant's then Secretary of the Interior did purport to determine that certain lands, including those owned by the said plaintiffs were lands in "private ownership" within the meaning of that statute and that the same would be benefited by the construction of such dike, and he did by his agents then solicit the then owners of said lands of the plaintiffs to enter into such repayment contracts, severally, with him in behalf of the defendant whereby each such owner would agree, among other things, to pay the defendant such pro rata share of the entire costs of such Lummi Diking Project, and all of the betterment, operation and maintenance charges and penalties in connection therewith, and would further agree that their respective lands would be by such contracts at once burdened with a first lien in favor of the defendant to secure the payment of such costs.

V.

That the said then owners of said lands did refuse to execute such contracts and no such contracts

affecting said lands have ever been executed; that although the said Secretary or his successors did purport to ascertain and determine that the said lands would be benefited by said construction, he and/or his successors did thereafter construct such dikes:

VI.

That thereafter on August 19, 1930, the said Secretary promulgated his "Public Notice," being the Notice referred to in said Act, reciting that he was acting in pursuance to the said Act and purporting to distribute the "total cost of the Project * * * equitably * * * among the lands benefited by the Project," and stating that "the construction costs assessed against each acre of land benefited by the Project is stated in the schedule of charges, referred to therein, and by reference made a part of said Notice, and providing for a schedule of payments over a period of twenty (20) years, and providing that the Secretary might take such action as he might deem proper to enforce payment thereof under the provisions of said Act and of contracts "executed with the respective landowners"; that said "Public Notice" is filed in the National Archives, and appear in C.F.R. 1949, Title 25. Part 144, page 177, and was published shortly after its promulgation in a newspaper of general circulation in said Whatcom County, Washington; that said Notice further indicated that such schedules would be and the same were filed with the engineer of the Bureau of Indian Affairs and the Superintendent of the "Lummi Reservation at Tulalip, Washing-

ton": that in such schedules and otherwise, the defendant, the United States, by its agents has listed and itemized the above-described tracts of the plaintiffs and caused it to be made to appear therefrom that parts of the construction costs of said improvement "were assessed" against each such tract of land.

VI(a).

That consistently since the giving of said public notice the defendant by its Bureau of Indian Affairs has annually, or at more frequent intervals, sent bills or statements to the respective owners of said tracts purporting, on the faces thereof to be statements of charges or assessments against said lands and for operation and maintenance charges, and being on standard forms prescribed by the Comptroller General of the United States, and bearing numbers and data identifying such charges with such schedules. That the past and present policy of the said Bureau, and particularly of the agents in charge of said Diking Project has been and is to respond to all inquiries as to the existence of liens against or charges in connection with said Project and as to the respective properties of the plaintiffs aforesaid by stating that there was due and owing to the United States such amounts as might remain unpaid of the respective "assessments" above mentioned and scheduled and have made such statements as to the said lands of each of said plaintiffs, and in open court such agents stated that such responses would be made to any

current inquiries, including any inquiries on behalf of prospective purchasers of said lands; that the existence of books of records containing such "assessments" and the policy of said Bureau to bill for the same and to assert them in response to inquiries has become generally known in the vicinity of the said lands, and have clouded, or tended to cloud the title of the said plaintiffs to their respective tracts.

VII.

That the lands of the plaintiffs, Percy Hood and Grace Hood, involved in this cause are described as

Lots 5, 6 and 7, Section 6, Township 38 North of Range 2 E. W. M., containing 79.82 acres more or less.

That pursuant to treaty between the United States and the Lummi Indians the said tracts were first allotted and later patented to "Mary Ya-Him-A-Loo or Mary" by the United States by its patent issued and dated December 31, 1885, copy of which as Exhibit D was made part of the complaint in this cause and by reference made part of this Finding; that by its pertinent provisions the United States did "give and grant" said tracts to said grantee, subject to a stipulation that "the same should not be aliened, "and to have and to hold the same unto "her and her heirs forever, with the stipulation aforesaid"; that the same and similar patents were known and referred to by the Indian Bureau as "restricted fee patent"; that thereafter Congress provided that pursuant to and in conform-

ity with legislation and regulations of the Bureau of Indian Affairs providing for the release of such restrictions and the alienation of such lands, and of the request of the heirs of Mary Ya-Him-A-Loo (to whom title to said property had descended upon her death), and after formal invitation to bids, had brought no offers, the plaintiff, Percy Hood, at the suggestion of the Commissioner of Indian Affairs, made an offer, which was incorporated into an Indian Bureau form entitled "Memorandum of Sale," on and under date of November 10, 1925, copy of which, as Exhibit E thereto was made part of the complaint, and which by reference is incorporated herein; and prepared and signed in behalf of said Department by "W. F. Dickens, Superintendent and Disbursing Agent" of the Agency having charge thereof, and by the plaintiffs Percy Hood and Grace Hood, which recited that the Hoods "having on November 10, 1925, purchased" said tract for \$10,100.00, and "having made a payment of \$2,525.00" thereon and "agreed to pay the balance, \$7,575.00, in deferred payments as evidenced by four promissory notes of even date herewith for \$1,893.75 each" payable "to the Superintendent" of the Agency in charge, "on or before 1, 2, 3 and 4 years after date, with interest at the rate of six per cent per annum from the date of approval of this memorandum by the Secretary of the Interior," and providing "that upon payment in full" of said balance "according to the tenor and effect of said notes, then and in such case a deed duly executed by said heirs of Mary Ya-Him-A-Loo,

and approved by the Secretary of the Interior," should "be delivered" to the said Hoods, "conveying said land to them," and further providing that in the event of default in payment of such principal or interest, the sale might "at the option of the Secretary of the Interior, be cancelled, and said land re-advertised" and sold "and in such case the sum of \$2,525.00" out of any amounts which might have been paid by the Hoods would be forfeited to the "vendors," the heirs of Mary Ya-Him-A-Loo, and it was further agreed that said deed should "be retained in escrow by the Commissioner of Indian Affairs until all the notes and interest" should have been paid, when said deed should be delivered to them; that the said down payment and notes, so dated, were given by the Hoods to said Agent in charge on the same date, to wit November 10, 1925.

VIII.

That at the same time, and bearing the same date of November 10, 1925, there was prepared at the office of said Agent the "Indian Deed of Inherited Land," a copy of which as Exhibit F was attached to and made a part of the complaint, which recited as grantors the names of some twenty-three heirs of Mary Ya-Him-A-Loo and the said W. F. Dickens, referred to as "Legal Guardian of" four named minor heirs, two having $\frac{2}{864}$ ths and two having $\frac{8}{864}$ ths undivided interests therein, and provided that in consideration of \$10,100.00, the grantors "do hereby grant, bargain, sell and convey unto" Percy Hood, his heirs and assigns forever,

the said real property, and that the grantors "covenant, promise and agree" with said Hood, his heirs and assigns, to "warrant and defend said premises against the claims of all persons, claiming or to claim by, through, or under them only"; that the said deed bears the signatures of all said adult heirs, and their respective acknowledgments taken at various dates from November 16, 1925, to January 16, 1926; that said signatures and acknowledgments were obtained by or through said Indian Agency.

IX.

That after the making of said "Memorandum of Sale" Walter F. Dickens, the Superintendent of the Agency, procured the appointment of himself to be the guardian of the four minor heirs, in separate causes, in the Superior Court of Whatcom County, Washington, and thereafter proceedings were had thereunder in which he was authorized and did sell the interests of the said minors to Percy Hood; that the consideration recited in said probate proceedings was the proportion of the total consideration of \$10,100.00 required of the Hoods which was in ratio to their respective undivided interests; that in fact the Hoods paid no other or separate consideration than the original offer of \$10,100.00 except for interest on their deferred notes, and made no separate nor distinct bid in the guardianship proceedings; that the return of sale in said proceedings referred to the sale as being made after March 8, 1926, but did not specify any date but the orders of confirmation

were entered on June 4, 1926; that thereafter the "Memorandum of Sale," which had been withheld from the Hoods up to that time and the said deed, the latter being plaintiffs' Exhibit II were sent to the Office of the Commissioner of Indian Affairs in Washington and both were thereafter approved on or about August 10, 1926, by the Secretary of the Interior by his Assistant; that thereupon one of the copies of the "Memorandum of Sale" was handed to Mr. Hood but said deed was held in escrow by said Superintendent; that on or about the month of April, 1928, and before the maturity of all of said notes the Hoods paid the balances due on said notes and said deed was delivered to them; that although the deed above mentioned was signed by said Walter F. Dickens as guardian and acknowledged by him on or about June 4, 1926, two deeds were given by him, respectively covering the said undivided interests of the said minors which were also duly approved on or subsequent to August 10, 1926, by the Secretary of the Interior;

X.

That in the "Schedule of Charges" incorporated by reference into the Public Notice heretofore mentioned the Secretary of the Interior classified the lands within the Project as W (for lands owned by white persons) and I (for lands owned by Indians); that in such Schedule he classified the said lands of Percy and Grace Hood as white owned; that at various times through his agents the Secretary so-

licited the said Hoods to sign repayment contracts; that they have never signed any such contract with reference to said lands; that as to lands in Indian ownership held under restricted fee patents repayment contracts were solicited of the owners and signed with respect to 48 out of 61 such tracts;

XI.

That the total construction charges assessed by the Secretary of the Interior against the Hood land are \$399.40; that the total operation and maintenance charges assessed thereto computed to July 6, 1955 are \$1,270.77; that the United States claimed penalty charges on said operation and maintenance charges as of July 6, 1955, in the amount of \$561.99. all of which \$561.99 is disallowed by the Court.

XII.

That there is no showing that any patent was ever issued by the United States as to the Hood land after the going into effect of the Act of March 18, 1926, and the title of the Hoods derived only through said conveyance by or for the heirs of Mary Ya-him-a-loo.

Done in Open Court this 7th day of May 1956.

/s/ JOHN C. BOWEN,

United States District Judge.

From the foregoing Findings of Fact the Court makes the following

Conclusions of Law

I.

That as to the lands of the plaintiffs other than the Hoods, the United States by the acts of its agent claims and assets a lien against the same, and that under 28 U.S.C.A. 2410 this court has jurisdiction to entertain the complaint of said plaintiffs.

II.

That the said claims of the United States as to said properties described and identified in Finding II are without foundation and void, and said plaintiffs are entitled to have their titles quieted against the same.

III.

That the said lands owned by the plaintiffs Hood are Indian lands within the meaning of the Act of March 26, 1926.

IV.

That legal title to said Hood lands remained in the United States until final payment of the purchase price and delivery of the conveyance of the Ya-him-a-loo heirs to the Hoods in 1928, after the passage of the Act of March 26, 1926.

V.

That notwithstanding that the "Memorandum of Sale" was made with the Hoods and they had paid a substantial portion of the purchase price and

given notes for the remainder and escrow arrangements for the delivery of the deed to them had been made, prior to the Act of March 18, 1926, and the other facts set forth in Findings VII, VIII and X, it was within the power of Congress to subject such lands to an involuntary lien to secure the payment to the United States of costs of the Lummi Diking Project apportioned among said lands; that such lien was created by the Act of March 18, 1926; that said lien covers only the construction charges amounting to \$399.40 and also for operations and maintenance charges of \$1,270.77 to July 6, 1955; that the United States is entitled to judgment and order of foreclosure sale against the plaintiffs Hood foreclosing such lien against their lands above described and selling the lands to pay for the total sum of \$1,670.17 without costs to either party, and the United States to pay accruing costs and the costs of sale.

Done in Open Court this 7th day of May, 1956.

/s/ JOHN C. BOWEN,

United States District Judge.

[Endorsed]: Filed May 7, 1956.

[Title of District Court and Cause.]

CONCLUSIONS OF LAW PROPOSED BY
PERCY HOOD AND GRACE HOOD

The plaintiffs, Percy Hood and Grace Hood, respectfully propose and request the making of the following

Conclusions of Law

A.

That equitable title to the said lands of the Hoods passed to them on the execution of the "Memorandum of Sale" and the payment of one-fourth of the purchase price in cash and the remainder in promissory notes on November 10, 1925, prior to the Act of March 18, 1926, under the doctrine of equitable conversion, and that such title became a full legal title upon payment of the balance of the purchase price, delivery of the "Indian Deed of Inherited Land" in 1928, and such equitable title could not be impaired and was not impaired by the subsequent Act of March 18, 1926.

B.

That the approval of the Secretary of State to said "Memorandum of Sale" and "Indian Deed of Inherited Land," although given on August 10, 1926, and though the said deed was physically delivered in 1928 on final payment of said purchase money notes then related back, so far as the United

States and the grantors herein to the date it bore, namely November 10, 1925.

C.

That notwithstanding the stipulation in the patent to Mary Ya-him-a-loo restricting the rights of herself and her heirs to alienate the same, the quality of their title thereunder was that of a title in fee simple.

D.

That the title of the Indian grantors in said "Indian Deed of Inherited Land" at the time of the execution of said "Memorandum of Sale," and their interests thereafter held at the passage of the Act of March 18, 1926 was such that said lands were not "Indian Lands" but "Lands in Private Ownership" within the meaning of said Act.

E.

That the only liens (other than contractual liens) authorized or created by the Act of March 18, 1926 were those provided in Section 2 thereof against Indian lands which had not yet been "patented"; that the said Section 2 could not and did not refer to the lands now owned by the Hoods, the same having been long since "patented."

F.

That the title of the Indian owners of said land, the heirs of Mary Ya-him-a-loo, being a fee, could not constitutionally be impaired or subjected to an

involuntary lien in favor of the United States without due process of law; that the Act of March 18, 1926 insofar as it might be held to apply to the lands of said heirs afforded no due process of law either to them or to the Hoods as their assigns, or potential assigns, and if said Act and said Section 2 in particular were intended to impose an involuntary lien or be construed as so doing, it is unconstitutional and void, and contrary to the 5th Amendment of the U. S. Constitution.

G.

That if said Act of March 18, 1926 created any lien against said lands, such lien came into existence only upon the making of the Public Notice under said Act, to wit on August 19, 1930, and did not affect the title of the Hoods, which in any event became vested not later than the delivery of said Deed in 1928.

H.

That in the proceedings relating to the sale of said lands the United States was acting as an agent for, and for the private benefit of said Indian owners, the Ya-him-a-loo heirs, and otherwise at such time had no interest in said transaction; that in soliciting the Hoods to sign the "Memorandum of Sale," containing as it did the covenant and promise that the lands therein mentioned would upon final payment of the price be conveyed to the Hoods, and in connection therewith causing before the passage of the Act of March 18, 1926, the said "Indian

Deed Inherited Lands'' to be executed containing the warranty of title to the Hoods against any claim or lien through said heirs, the United States is estopped from doing any act or asserting any claim contrary, or which would have the effect of breaching such warranting, and that its action in now claiming a lien, which can be sustained only, if at all, because of such Indian ownership, would cause a breach of such warranty; that it would be inequitable for the United States to maintain such claim, and in equity and good conscience and in law it is barred from so doing.

Respectfully submitted,

/s/ DONALD M. BUSHNELL,
Attorney for Plaintiffs.

Receipt of copy acknowledged.

[Endorsed]: Filed May 7, 1956.

United States District Court, Western District
of Washington, Northern Division

Civil Action No. 121

FRANK X. IMHOF, LYLE HUNTER and
LORETTA HUNTER, His Wife; RUTH
SLATER, a Widow; EVERETT MATZ and
NINA MATZ, His Wife; MYRTLE BLOX-
HAM, ARTHUR B. WATTS and MAR-
GARET M. WATTS, His Wife, and PERCY
HOOD and GRACE HOOD, His Wife,

Plaintiffs,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

JUDGMENT QUIETING TITLE AGAINST
THE CLAIMS OF THE UNITED STATES
OF AMERICA AS TO CERTAIN LANDS
AND ESTABLISHING AND FORECLOS-
ING A LIEN AGAINST OTHER LANDS

This Cause having come up regularly for trial on
July 15, 1955, at Bellingham, Washington, before
the undersigned judge of the above-titled court, the
plaintiffs being represented by Donald M. Bushnell
and W. E. Evenson, and the defendant, the United
States of America being represented by Charles P.
Moriarty, United States Attorney for the Western
District of Washington, and Richard Harris, As-
sistant United States Attorney, and evidence having

been submitted and the issues tried, and the court having been fully advised in the premises, and having heretofore made and entered its findings of fact and conclusions of law, now, therefore, it is hereby

Ordered, Adjudged and Decreed as follows that the United States of America has no right, title, interest, lien or claim in or to the lands of the plaintiffs in this cause (other than the lands of Percy Hood and Grace Hood, his wife), which lands are all located in Whatcom County, Washington, and the tracts of each of the plaintiffs herein being as hereinafter designated:

Lands of Frank X. Imhof (who is married to Patricia Imhof)

Lots 2 and 9, and the SW $\frac{1}{4}$ NE $\frac{1}{4}$, and the NW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 6, Twp. 38 N., R. 2E.

Lands of Lyle Hunter and Loretta Hunter, his wife.

Gov't Lot 3, Sec. 1, Twp. 38 N., R. 1 E.

Lands of Everett Matz and Nina Matz, his wife.

Gov't Lot 3, Sec. 1, Twp. 38 N., R. 1 E.

Lands of Ruth Slater (Mrs. Glen Slater)

Lots 3, 4 and 6, and the SW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 2, Twp. 38 N. R. 1 E.

Lands of Myrtle Bloxham.

NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ and Lot 13, Sec. 7, T. 38 N., R. 2 E. W. M., except a triangular parcel

of land in the southwest corner of said Gov't Lot 13, lying southwest of Smuggler Slough; also a triangular parcel of land in Lot 8, south of said Lot 13, between Smuggler Slough and Slater Slough.

Lands of Arthur B. Watts and Margaret M. Watts, his wife.

NW $\frac{1}{4}$ of the NW $\frac{1}{4}$ (Gov't Lot 4) in Section 1, T. 38 N., R. 1 East of W.M., less roads.

and that the same are owned in fee simple respectively by the above-named plaintiffs and their respective titles thereto are hereby quieted and set at rest against any lien or claim of lien asserted to have been made by the defendant, United States of America, arising out of the Act of March 18, 1926 (44 Stat 211-212).

It Is Further Ordered That by and under the provisions of said Act of March 18, 1926, and pursuant to actions taken under the authority thereof, the United States of America has and is entitled to a lien on the following described lands of the defendants Percy Hood and Grace Hood, his wife, more particularly described as Lots 5, 6, and 7, Section 6, Township 38 N. of Range 2, E. W. M. in Whatcom County, Washington, in the sum of \$399.40 as and for construction charges under said Act and the further sum of \$1,270.77 as and for operation and maintenance charges up to and including July 6, 1955, making a total of \$1,670.17, and that the said defendant, United States of

America is entitled to have the same foreclosed and the said real property sold and the proceeds used to pay and discharge said liens, together with interest from this date at the statutory rate of six per cent per annum.

It Is Ordered, Adjudged and Decreed that the above described real property of the said plaintiffs Percy Hood and Grace Hood, his wife, be sold to satisfy the said sum of \$1,670.17 under said liens, subject to such right of redemption as is provided by law and that the said sale shall be conducted in accordance with the law and the practice of this court by the United States Marshal for the Western District of Washington and that the time, place and manner of said sale shall be as this court may hereafter upon application of the defendant, United States of America, hereafter prescribe.

It Is Further Adjudged that no costs be recovered against any party to this cause, and the defendant, United States of America, shall pay the accruing costs of any sale which may be had, hereunder.

To all of which plaintiffs except and their exceptions are allowed.

To the disallowance of penalties and/or interest on the sums allowed herein as a lien on the subject properties, defendant United States of America excepts and its exceptions are allowed.

Plaintiffs Hood also except to all findings of fact and conclusions of law herein supporting the allowances by the court to defendant of any recovery

whatsoever against subject property and to the court's refusal to make and enter plaintiffs' proposed conclusions, and their exceptions are allowed.

Done in Open Court this May 7th, 1956.

/s/ JOHN C. BOWEN,

United States District Judge.

Presented and approved by:

/s/ F. N. CUSHMAN,

Asst. United States Attorney.

Approved as to form:

/s/ DONALD M. BUSHNELL.

[Endorsed]: Filed May 7, 1956.

Entered May 9, 1956.

[Title of District Court and Cause.]

MOTION FOR NEW TRIAL

Come Now the plaintiffs, Percy Hood and Grace Hood, his wife, by its undersigned attorney, and move this court to set aside the provisions of the Judgment heretofore entered in this cause establishing a lien upon the lands of said plaintiffs, Percy Hood and Grace Hood, and providing for a foreclosure thereof, and to grant a new trial to said plaintiffs as to the matters and things involved in the said Judgment against them, or in the alterna-

tive to vacate that portion of the Judgment heretofore entered herein and to make and enter its Judgment denying any claim or lien of the Defendant against them or their said lands, and for the following reasons:

I.

That the said Judgments are contrary to law, in whole or in part by reasons of errors in law occurring at the trial, as follows:

(A) In that the court erred in making and entering its Conclusions of Law numbered III and V.

(B) In that the court erred as a matter of law in making and entering so much of its Conclusions of Law No. V as provides that any lien of the United States against the lands of these plaintiffs covers not only the construction charges but "also for operation and maintenance charges of \$1270.77 to July 6, 1955."

(C) In that the Court erred as a matter of law in refusing to make and enter the "Conclusions of Law Proposed by Percy Hood and Grace Hood," being lettered A, B, C, D, E, F, G, and H.

(D) In that the Court erred as a matter of law in refusing to make and enter a Finding of Fact, as requested by these plaintiffs, to the effect that

The Hoods were let into possession of the premises, without any other or separate contract or agreement pending the approval of

said deed and starting farming operations thereon on or about March 1st, 1926.

such request being a portion of the original Finding proposed by them numbered IX, and having followed No. IX as heretofore adopted and made by this court, when there was creditable evidence requiring such Finding and no substantial evidence contrary thereto.

II.

These Plaintiffs state that were it not for the making of the foregoing errors of law Judgment would have resulted necessarily for these Plaintiffs in conformity to so much of the prayer of the Complaint as referred to their lands described therein.

Dated this 16th day of May, 1956.

/s/ DONALD M. BUSHNELL,
Attorney for the Plaintiffs Percy Hood and Grace Hood.

Certificate of service attached.

[Endorsed]: Filed May 17, 1956.

[Title of District Court and Cause.]

MINUTE ORDER—JUNE 4, 1956

Present: Hon. John C. Bowen, Judge

Donald Bushnell for Percy Hood, et ux.

U. S. Atty. F. N. Cushman.

Pursuant to order of adjournment, Court convenes and hears the following matters:

Called, argued and denied and all pending motions are denied and it is so ordered. Exceptions are allowed Plaintiffs' counsel.

(Certified true copy.)

[Endorsed]: Filed June 4, 1956.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given this 2nd day of August, 1956, that Percy Hood and Grace Hood, his wife, hereby jointly and severally appeal to the United States Court of Appeals for the Ninth Circuit from that part of the "Judgment Quieting Title Against the Claims of the United States of America as to Certain Lands and Establishing and Foreclosing a Lien Against Other Lands" in favor of the United States of America, plaintiff, on its counterclaim which purports to establish and foreclose a lien against the lands of said appellants, Percy Hood and Grace Hood, the particular part so appealed from being the paragraph beginning "By and under the provisions of said Act of March 18, 1926 * * *"

and the paragraph immediately following said paragraph.

/s/ DONALD M. BUSHNELL,
Attorney for the Appellants.

[Endorsed]: Filed August 2, 1956.

[Title of District Court and Cause.]

APPELLANTS' STATEMENT OF POINTS
TO BE RELIED UPON IN THIS APPEAL

Come Now, the appellants, Percy Hood and Grace Hood, his wife, and state that on their appeal herein they will rely upon the following points:

1. That the District Court erred in making its Conclusions of Law numbered III, IV and V and in refusing to make and adopt the Conclusions of Law Proposed by the Appellants, being designated therein A to H, inclusive, and in adjudging and decreeing that the United States has, and is entitled to, a lien upon the lands of the appellants described in the complaint under the Act of March 18, 1926, either for and on account of construction costs of the dike mentioned in said Act or for operation and maintenance thereof, and/or interest, or for both such charges, and in decreeing that such purported lien be foreclosed against such lands, because:

A. Under the facts as found by the District Court:

(1) Upon the preparation of the Memorandum of Sale of Alloted Land and the Indian Deed of Inherited Land and of the execution of the former by the Indian Agency Superintendent and these appellants, all on November 10, 1925, and the payment of the consideration for the purchase of the land by the appellants in cash and negotiable notes, and in view of the provisions of warranty of title contained in said deed these appellants became possessed of an equitable title under the doctrine of equitable conversion, or at least an equitable interest and right to acquire legal title, subject only to the right of the Secretary of the Interior to refuse to approve the sale provided for therein, which right, title or interest of the appellant was a property right not subject to any compulsory lien such as is asserted herein under said Act of March 18, 1926.

(2) That the formal approval to said Memorandum of Sale and to said Indian Deed, given on August 10, 1926, related back so as to make either or both of them effective as of the date of their execution, to wit, November 10, 1925; that the upon its ultimate delivery in 1928, after timely payment by the appellants of their said notes in full discharge of the consideration for said sale, the said Deed should be deemed as against the United States to have been delivered on the day of its date, November 10, 1925, prior to the enactment of the Act of March 18, 1926.

(3) That the rights of the appellants under said Memorandum of Sale and under said deed held in escrow under said Memorandum, they having fully performed their obligations thereunder, were property rights, and invulnerable to any lien under said Act of March 18, 1926, the appellants having never consented to such lien or signed any contract therefor; that the lien sought to be enforced by the judgment herein is involuntary, unilateral, dependent solely (in the absence of their consent) upon Congressional fiat, without foundation in law, and obnoxious to the Constitution of the United States as a denial of due process of law.

(4) That the United States is estopped, whether as to itself as an entity, or as agent for the Indian vendors named in said Memorandum of Sale and Indian Deed, from asserting its said claimed and purported lien against the lands of these appellants; that if there is a failure of a technical estoppel, and in any event, there was a contractual duty, at least implied if not expressed, in said Memorandum of Sale construed with said Indian Deed, and arising out the negotiations of its agents with the appellants resting upon the United States, and as a matter of good faith, to do nothing to contravene, violate or impair the rights of the appellants under said Memorandum of Sale and Indian Deed, or to nullify or impair the obligation of the Indian grantors in said deed to convey a good title to the appellants; that the imposition of the lien herein decreed would so impair the rights of the appellants

and impair, breach and nullify the warranties of title in said Deed.

(5) That notwithstanding the restriction in the patent to Mary Yah-him-a-loo as to alienation without the approval of the President, the title thereby granted to her, and which passed by descent to the Indian grantors in said deed, and to these appellants, was and is a title in fee simple; that as none of them consented to any lien under the Act of March 18, 1926, the said Act was ineffective to impose any lien, and the lien herein purported to be decreed, upon the lands of the appellants; that said lands, even if the title thereto were wholly in said grantors at the time of the enactment of said Act, were not—within the meaning of said Act—“Indian Lands” but rather “Lands in Private Onwership”; that the attempt to impose any lien under said Act on said lands (no consent having been given by said grantors or the appellants), was void and contrary to the rights of said parties under the due process clause of the Constitution.

(6) That the only liens (other than contractual liens not here involved) authorized or attempted to be created by the said Act of March 18, 1926, were those provided in Section 2 thereof and against Indian lands which had not yet been “patented”; that since the lands here involved had long since been patented to Mary Yah-him-a-loo, said Section 2 could not and did refer to such lands or create or purport to create any lien against them.

(7) That if said Act of March 18, 1926, created any lien against the lands herein involved, such lien came into existence only upon the making of the "Public Notice" under said Act, to wit, on August 19, 1930, and did not affect the title of the appellants thereto, which at the latest vested not later than the final delivery of the Indian Deed to the appellants in 1928.

(8) That even if there should be decreed to be a lien upon the lands of the appellants for their alleged share of the construction costs of the Lummi Dike, there was no lien in any event for operation and/or maintenance; that no authority was given in the Act of March 18, 1926 for the imposition of operation and maintenance costs; that the attempt to impose them upon appellants is without any warrant or basis whatsoever in law; if it be sought to justify the same upon any regulation purported to be made by the Secretary of the Interior or other executive agency of the United States, such regulation to such extent is without foundation and void.

/s/ DONALD M. BUSHNELL,

Attorney for the Appellants.

Receipt of copy acknowledged.

[Endorsed]: Filed August 17, 1956.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

United States of America,
Western District of Washington—ss.

I, Millard P. Thomas, Clerk of the United States District Court for the Western District of Washington, do hereby certify that pursuant to the provisions of Subdivision 1 of Rule 10 as amended, of the United States Court of Appeals for the Ninth Circuit, and Rule 75(o) of the Federal Rules of Civil Procedure, and designation of counsel, I am transmitting herewith the following original documents and papers in the file dealing with the above cause as the record on appeal herein from that part of the Judgment Quieting Title Against the Claims of the United States of America as to Certain Lands and Establishing and Foreclosing a Lien Against Other Lands beginning "By and under the provisions of said act of March 18, 1926" and the paragraph immediately following said paragraph rendered May 7, 1956 to the United States Court of Appeals for the Ninth Circuit, at San Francisco, said papers being identified as follows:

1. Petition for Removal, including copy of original Complaint and Summons, filed June 26, 1953.
2. Notice of Removal, filed June 26, 1953.
4. Answer as to all Plaintiffs other than Percy Hood and Grace Hood, his wife, filed Nov. 12, 1953.

5. Answer as to Plaintiffs Percy Hood and Grace Hood, his wife, filed Nov. 12, 1953.

6. Counterclaim, filed Nov. 12, 1953.

9. Answer of Defendants Percy Hood and Grace Hood to Counterclaim of the United States, filed Jan. 28, 1955.

26. Court's Oral Opinion, filed Aug. 30, 1956.

15. Findings of Fact and Conclusions of Law, filed May 7, 1956.

17. Conclusions of Law Proposed by Percy Hood and Grace Hood, filed May 7, 1956.

16. Judgment quieting title against the claims of the United States of America as to certain lands and establishing and foreclosing a lien against other lands, filed May 7, 1956.

19. Motion for New Trial, filed May 17, 1956.

Certified copy of minute entered Order denying new trial, entered June 4, 1956.

21. Notice of Appeal, filed August 2, 1956.

22. Bond for Costs on Appeal, filed August 2, 1956.

23. Appellants' Statement of Points to be relied upon in this appeal, filed August 17, 1956.

24. Designation of Contents of Record on Appeal, filed August 17, 1956.

I further certify that the following is a true and correct statement of all expenses, costs, fees and

charges incurred in my office by or on behalf of the appellant for preparation of the record on appeal in this cause, to wit: Filing fee, Notice of Appeal, \$5.00, and that said amount has been paid to me by counsel for appellant.

In Witness Whereof I have hereunto set my hand and affixed the official seal of said District Court at Bellingham, this 4th day of September, 1956.

[Seal] MILLARD P. THOMAS,
Clerk;

By /s/ MARJORIE J. EDQUIST,
Deputy Clerk.

[Endorsed]: No. 15267. United States Court of Appeals for the Ninth Circuit. Percy Hood and Grace Hood, his wife, Appellants, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the Western District of Washington, Northern Division.

Filed: September 6, 1956.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

